

ON THE PREVENTION OF UNPUNISHED CRIMES.¹

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INTRODUCTION

To engage in research, writing, and teaching about genocide is a very depressing enterprise; one can only keep going by placing one's faith in the hope of finding means of preventing such abominations in the future. Of course, I am not the only one who is motivated by the hope for a better future, even though all the contemporary evidence seems to point in the opposite direction. This is shown by the growing body of literature dealing with prediction, prevention, early warning systems, international law, trials of the perpetrators, and humanitarian intervention.

A significant body of scholarly opinion holds that "humanitarian intervention" represents our best hope for the future. For those who are not familiar with the semantics of this debate I should point out that there is nothing humanitarian about the proposed intervention. The term is meant to reassure critics who oppose gun-boat diplomacy, no matter how cleverly disguised. The advocates of this policy still believe that problems, including genocide and gross violations of human rights, can be solved by sending in the armed forces.² They hold to such a view in spite of the lack of evidence in its favour. At the time of writing, there has not been a case of military intervention that would support their claims.³ The

¹ Paper to be read at the founding meeting of the Association of Genocide Scholars. June 14-16, 1995, at the College of William and Mary in Williamsburg, Virginia, U.S.A.

² Footnote to be added later.

³ India's intervention which led to the founding of Bangladesh may be

evidence seems to indicate that humanitarian intervention mainly achieves an increase in the number of the dead. Thus, for soft-hearted critics like myself, there must be other methods for eliminating genocide that do not rely on additional killing.

It was for such reasons that a few years ago I, too, was moved to publish a paper on prevention.⁴ In that paper I explored some areas that might contribute to intervention in the early stages of genocide. Briefly, the areas dealt with were: education, publicity, economic sanctions, organizational linkages, and the law. Ever since I wrote that paper, I have sporadically thought about why this effort left me feeling dissatisfied. One reason was that its recommendations relied entirely on formal organizations for the implementation of preventive mechanisms. Since then, I have modified my views and have presented a paper which made the case for the participation of an aroused citizenry as an essential element in putting pressure on formal organizations and governments.⁵ It seemed to me then, and it still does, that if a citizenry's consciousness can be raised in support of seals or trees, then it ought to be possible to mobilize their support in favour of people. However, my feelings of dissatisfaction have continued and have led to further thinking and exploring of this theme. Therefore I offer this further installment on the same topic.

considered an exception. However, the circumstances were quite unique and are unlikely to be duplicated.

⁴ Kurt Jonassohn, "Prevention without Prediction." Holocaust and Genocide Studies, vol. 7, no. 1 (Spring 1993): pp. 1-13.

⁵ Kurt Jonassohn, "Rethinking the Conceptualization of Genocide and Gross Human Rights Violations." Paper presented at the Annual Meeting of the American Sociological Association, held 5-9 August 1994 in Los Angeles.

WHO IS THE PERPETRATOR?

Almost half a century ago, the General Assembly of the United Nations approved the "Convention on the Prevention and Punishment of the Crime of Genocide." Although it defined the crime, it failed to put in place the judicial and enforcement mechanisms for the prosecution and punishment of the perpetrators of such crimes. Thus, none of the perpetrators of the many genocides committed since then have been either tried or punished by the United Nations. Most commentators have blamed this state of affairs on the fact that the United Nations is a club of sovereign nation states who are unlikely to agree to the impeachment of one of their members. While there is evidence accumulating that sovereignty is losing some of its aura of legitimacy, this is not the focus of this paper. Instead, I propose to raise some questions about the meaning of the term 'perpetrator'. Because it has been used to denote both collectivities as well as individuals, I propose to explore some aspects of this dichotomy insofar as it is relevant to the prevention of genocides and gross human rights violations.

THE COLLECTIVITY AS PERPETRATOR

The United Nations' inability to act on its own Convention does not require further comment at this time. What is even more discouraging, however, is that international relations among countries allow equally small room for hope. They may make "politically correct" statements about human rights, but they are unlikely to act on such statements unless their interests in power and/or wealth are served at the same time. As a Canadian politician recently said when interviewed about his trip to China: if we suspended trading with all the countries that violate human rights,

we would have very little foreign trade.⁶ The international trade in arms and war-related technology is a good example. While some of these suppliers may disapprove of the human rights records of their customers, they excuse their actions by arguing that others would pick up the business if they refused it. Since the advent of the economic recession, the weapons trade has become increasingly significant in countries with a large war industry. To prevent their poorest customers from deserting them, several of these countries are now making their foreign aid dependent on weapons purchases.⁷

Other pressures apply to members of the international community: diplomats, journalists, human rights workers, or research scholars whose observations on human rights violations are reported in too much detail and too accurately, are asked to leave perpetrator countries and are denied visas in the future. To avoid such situations, much information is either suppressed or distorted. When the people who are exposed to these threats accept such strictures, they usually have an interesting rationalization. They argue that a boycott of economic and diplomatic relations would not work and might even convince the perpetrator of the rightness of his ways; even more important, such boycotts would deprive democratic countries of the opportunity to exercise a liberating influence. They do not usually provide evidence for the effectiveness of such influence, nor do they refer to the cases when their influence was in support of right-wing totalitarian alternatives. Without going into much detail here, it seems that there is little to be expected from the actions of governments, NGOs, or multinational corporations that might reduce the frequency of gross

⁶ Premier Harcourt of British Columbia.

⁷ Footnote to be added later.

human rights violations. In other words, perpetrator governments or organizations have little to fear from the self-appointed defenders of democratic freedoms.

THE INDIVIDUAL AS PERPETRATOR

"Those who were fortunate enough to survive must assume responsibility for fighting the silence and the shadows which impunity seeks to cast over society -- or else become its accomplices."⁸

".... the goal of prosecution is to discourage the recurrence of such abuses, as well as to strengthen the Rule of Law, and thereby demonstrate to those invested with state authority that they are ultimately responsible for their actions."⁹

While genocide and gross violations of human rights are always committed by governments or quasi-governmental organizations, it is also true that within these collective bodies there are individuals who make decisions and give orders. In addition to giving orders that threaten the survival of victim groups, these individuals also enrich themselves in many illegal ways. The sad fact is that the vast majority of these individuals are never prosecuted and held accountable for their actions.

However, it is in this area that one can locate hopes for prevention, provided that large parts of the public can be motivated to join in an outcry against such individuals. Such a process might go through several

⁸ Luis Pérez Aguirre, "The Consequences of Impunity in Society." pp. 107-120 in International Meeting on Impunity of Perpetrators of Gross Human Rights Violations. Organized by The commission nationale consultative des droits de l'homme and the International Commission of Jurists and held under the auspices of the United Nations (Palais des Nations, Geneva: 2 to 5 November 1992) p.111.

⁹ Adama Dieng, "Opening Speech." pp. 19-26 in Ibid., p.21.

stages, from ostracism to arrest and punishment.

Ostracism would deprive such individuals of diplomatic immunity and legitimacy. If wide-spread enough, it would prevent such perpetrators from travelling outside their country and from receiving distinguished visitors in their own country. The recent history of Kurt Waldheim, whose crime was a much lesser one, proves that ostracism can be a very effective punishment.¹⁰

A further step would become possible if there were some international agreement on how such perpetrators should be arrested and tried. This will require revisions to the international aspects of human rights legislation and to extradition treaties. However, in the meantime, it is often possible to prosecute perpetrators even in the absence of such revisions. A recent example concerns Kamal Bamadhaj who, carrying a passport of New Zealand, was shot three years ago by the Indonesian army in a massacre carried out during a peaceful demonstration in East Timor. General Sintong Panjaitan, who was at the time in charge of the army in East Timor, and who is now a senior adviser to the Indonesian minister of technology, was ordered by a U. S. federal court to pay \$14 million in punitive damages and for causing pain and suffering to the family. Since the general has no assets in the U. S. and cannot be arrested as long as he stays out of that country, this sentence is not likely to be carried out. But it represents a symbolic victory of tremendous value.¹¹ Unfortunately, this case received very little publicity. If more countries were to hold such trials more frequently, and if such trials received more publicity, the

¹⁰ The role of the Vatican probably did more to damage its reputation than to enhance that of Waldheim.

¹¹ Letter to the Editor of the Manchester Guardian Weekly, vol. 151, no. 21 (November 20, 1994), p. 2.

perpetrators would increasingly be perceived by the general public as scofflaws.

This case is also a dramatic illustration of the behind the scenes management of publicity. One would have thought that a judgement handed down by a Federal Court of the U.S.A. had sufficient credibility and legitimacy to be reported in the media of the day. However, no mention of this case was found in several newspapers such as the New York Times, the Washington Post, or the Chicago Tribune. At the same time, there was extensive coverage of the economic summit that took place in Jakarta.

Many other cases could be cited where the media published distorted coverage or no coverage at all. An example of the former was the wide-spread refusal of the media to report the 1984 Ethiopian famine as a deliberately planned, man-made weapon against groups opposing the government. An example of no coverage is the plight of the East Timorese which received wide-spread coverage only when, after 15 years of victimization, a massacre took place in the presence of foreign journalists.

Most discouraging is the almost total silence of the media about those cases where an effort is being made to bring individual perpetrators to justice. At present, only a few such individuals criminals have been tried or are being tried. For example, two Treblinka trials were held in Dusseldorf in 1964-5 and in 1970, and there were three Auschwitz trials in Frankfurt between 1963 and 1966. Ethiopia has over a thousand men in the Addis Ababa jail awaiting trial for war crimes. The Yugoslav War Crimes Tribunal has prosecuted its first case, against a Bosnian Serb, Dusan Tadic, under arrest in Germany since December 1994. In November 1994, the UN created an international tribunal to try those responsible for genocide in Rwanda.¹² Unfortunately there appears to exist a conspiracy

of silence about such proceedings. I am not even willing to guess at the components of this conspiracy, but I am pleased to notice that it seems less efficient with regard to the recent tribunals in the former Yugoslavia and in Rwanda.

The final step in dealing with individual perpetrators would be to prevent them from enjoying a golden retirement when their regime is finally overthrown. This would require, 1.) new controls on the transfer of stolen wealth and 2.) pressure on those countries that are inclined to provide safe havens for such criminals.

In short, we are facing two interrelated problems in following this course of discouraging future potential perpetrators. The first one is to bring the offenders to justice; not only the relatively minor ones, but also those in charge. But it is not sufficient to bring them to justice if most are pardoned and only a few receive modest sentences. That would only continue to send the message that gross violations of human rights may be committed with impunity. The second problem is to bring such judicial proceedings to the attention of the widest possible audience. So far, the media have largely refused to do this. That makes them co-conspirators in the continuing massive violations of human rights in so many countries that have sanctimoniously signed the relevant conventions outlawing them.

As long as none of these things happen, there is nothing to discourage future perpetrators. Quite on the contrary, they can look forward to a rich and successful career. To confirm that this is so we need

¹² Colin Tatz, Reflections on the Politics of Remembering and Forgetting. The First Abraham Wajnryb Memorial Lecture, 1. December 1994. (North Ryde, NSW, Australia: Centre for Comparative Genocide Studies, 1995) pp.26-31. While several cases are before the Tribunal, all but Dusan Tadic remain at large. There may well be additional data since this was written.

only look at the careers of some of the more prominent perpetrators in recent history. Idi Amin of Uganda is reported to be living off his ill-gotten gains in great luxury in Saudi Arabia. Mengistu Haile Mariam of Ethiopia is reported to enjoy similar privileges in Zimbabwe. Suharto of Indonesia remains in full control of his government, as do a large number of other perpetrators of human rights violations. Perhaps the most egregious example in recent history comes from Haiti where the military dictatorship was finally forced out of office by a threat of military intervention from the United States. However, this success was severely tarnished when the same United States used its own aircraft to fly Cedras and his family with their ill-gotten wealth to retirement in Panama, and flew the rest of his entourage to retirement in Miami. There was no suggestion that any of them would be held accountable for their misdeeds.¹³

In the case of the former Yugoslavia, we are treated to the spectacle of the perpetrators being received with diplomatic courtesies at peace negotiations where they agree to cease-fires they have no intention of observing. In the case of Rwanda there is talk of bringing the perpetrators to trial, although it is not at all clear whose hands are clean enough to lend credibility to such trials and prevent them from becoming a matter of the victims avenging their losses. Using personnel from so-called neutral countries will not solve that dilemma because several of these nominally neutral countries provided the arms which allowed this conflict to escalate in the first place.¹⁴ In the meantime, so many people are being arrested

¹³ It has been argued that this solution saved a great many lives that would have been lost if the government of Haiti had been changed by military action. This is almost certainly so, but it unfortunately remains true that what happened looked remarkably like rewarding those who had been responsible for the misdeeds of the previous regime.

and stock-piled in over-crowded jails that mortality due to suffocation has become a serious problem for the guilty and the innocent alike.

In my current state of thinking, the most important step toward the prevention of future gross human rights violations is the prosecution of key individuals in responsible roles. Although it should be self-evident, it must be stressed that the targets of such prosecutions should be the people at the top - not those at the bottom, as is so often the case.

In order for such prosecutions to take place we should not rely on governments and NGOs to take the initiative. Such initiatives will become meaningful and effective realities when grass roots outrage will reach a crescendo that cannot be ignored. How such an awakening of grass roots consciousness is to be stirred up is a practical problem. Perhaps we should study the techniques employed so successfully by Greenpeace. If they can rouse such outrage in support of saving seals and trees, we should have little trouble mobilizing similar support for saving people.

CONCLUSION

In modern genocides, the perpetrator society can almost always be shown to incur serious and long-lasting losses. This self-inflicted punishment would act as a deterrent if it were widely recognized and understood. For this reason such societies should not be prosecuted¹⁵ - even if such

¹⁴ Of course, people with unimpeachable integrity could be found in any of these countries. The issue here is whether it is enough for justice to be done, or whether it must also be seen to be done -- an issue that is beyond the scope of this paper.

¹⁵ Such prosecutions of perpetrator societies can, in theory, take many forms: from censure by the United Nations, to prosecutions in the world court in The Hague, to punitive treaties imposed after military intervention, to withdrawal of foreign aid and technical assistance, to economic boycotts, etc.

prosecution could be undertaken and its results be enforced. Instead, the scale of their losses should become widely known and understood.

However, this could happen only if massive popular outrage were to force educational institutions and the mass media to deal with these aspects of genocide.

While societies incur collective costs, individual perpetrators enrich themselves in entirely illegal ways at the expense of the victims. In addition, if they live that long, they are now allowed to enjoy their ill-gotten gains in luxurious retirement. It is such individuals who should be tried and punished in highly publicized ways.

If the costs to the perpetrator society and the punishment of the individual perpetrators were properly documented and widely publicized, then there would be some hope that genocides and gross human rights violations would decrease - perhaps even disappear - in the future. How these goals are to be achieved is the question that this paper challenges you, and our newly founded association, to answer.